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GUANNEX LEASING SDN. BHD.

v.

MATHEW SEBASTIAN ASHLEY DENTAL CLINIC & SURGERY & ANOR.

b

HIGH COURT MALAYA, KUALA LUMPUR

ZAKARIA YATIM J

[SUIT NO. D2-23-842-87]

2 AUGUST 1990

c

CIVIL PROCEDURE: *Application for further arguments in open Court - Appeal by defendants against decision of Senior Assistant Registrar - Hearing of appeal postponed three times previously - Whether rights of defendant defeated - Order 56 r. 2(2) Rules of the High Court 1980 - definition of further - Whether r. 2(2) can be involved when there were no arguments in chambers.*

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This was an appeal by the defendants against a decision of the Senior Assistant Registrar granting the plaintiff final judgment. On the date of the hearing of the appeal, 30 January 1990, the 1st defendant who had discharged his Counsel, requested an adjournment; the 2nd defendant was absent. The Court refused to grant an adjournment, as the matter had been postponed thrice previously, and ordered that the appeal be dismissed with costs. Three days after the above order was made, the 1st & 2nd defendants filed a notice of intention to act in person in place of their solicitors.

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The question that arose in this case was whether the defendants were entitled to ask for further arguments in open Court under O. 56 r. 2(2) of the Rules of the High Court 1980 (RHC).

Held:*f*

[1] Under O. 56 r. 2(2), there must be an order made in chambers before a party is entitled to ask for further argument in open Court. Since on the facts of this case there was no argument at all on 30 January 1990 in relation to the subject of the order contested, r. 2(2) could not be invoked.

[Order accordingly.]

[Editor's Note: The 1st defendant has lodged an appeal to the Supreme Court.]

*g***Cases referred to:**

Lee Ah Tee v. Ong Tiow Pheng & Ors. [1984] 1 CLJ (Rep) 187

Tan Eng Hoe v. Liang Hooi Kiang [1961] 27 MLJ 119

Legislation referred to:

Rules of the High Court 1980, O. 56 r. 2(2)

Other sources referred to:

The Shorter Oxford Dictionary, 3rd. Edn., Vol. 1, p. 820

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For the defendant - Saran Singh; M/s. Saran Singh & Co.

For the plaintiff - S. Asiriah; M/s. Yusuf Lee Pathma & Marbeck

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JUDGMENT

Zakaria Yatim J:

This is an appeal by the first and second defendants against the decision of the Senior Assistant Registrar given on 20 December 1988 ordering that leave be granted to the plaintiff to enter final judgment against the defendants for a sum of RM121,331.57 together with interest and costs.

At the hearing of the appeal on 30 January 1990, the first defendant was present but without his Counsel. The second defendant was absent. The plaintiff was represented by their Counsel, Miss Asiriah. The first defendant informed me that he had discharged his Counsel and that he wanted to get a new one. He requested that the hearing of the appeal be adjourned to a new date. Miss Asiriah informed me that the appeal had been postponed three times previously. I refused to grant the adjournment and ordered that the appeal be dismissed with costs.

The following are my reasons for refusing to grant the adjournment: The notice of appeal was filed on 24 December 1988. As Miss Asiriah rightly said, the appeal had been postponed three times previously. The defendants were then represented by a solicitor from Messrs. Venu Nair & Co., a firm of advocates and solicitors. The solicitors for both the plaintiff and the defendants were informed of the hearing date of 30 January 1990 by a letter written by the Senior Assistant Registrar dated 3 November 1989. The solicitors for the defendants must have received the letter from the Senior Assistant Registrar sometime during the first or second week of November 1989. The first defendant discharged his solicitor on 5 October 1989. In a letter dated 25 January 1990 Messrs. Venu Nair & Co. wrote,

... We confirm that we are no more acting for the abovenamed 1st defendant, Dr. Mathew Sebastian (t/a Ashley Dental Clinic & Surgery), as the abovenamed 1st defendant had discharged us as his solicitors in conduct of this matter on 5 October 1989.

In the circumstances we shall not be appearing on his behalf on 30 January 1990 ...

The first defendant had about four months to instruct another solicitor. Yet on the date of the hearing the first defendant said he wanted to get a new Counsel. This was just one excuse adjourn the hearing of the appeal.

After taking into consideration the circumstances in this case I refused to grant the adjournment and since the first defendant did not proceed with the appeal I dismissed the appeal with costs. I do not think my order would defeat the rights of the defendant altogether. *Lee Ah Tee v. Ong Tiow Pheng & Ors.* [1984] 1 CLJ (Rep) 187. In the first place, the first defendant was not entitled to insist that the appeal be adjourned until he was able to get a Counsel of his choice. See *Tan Eng Hoe v. Liang Hooi Kiang* [1961] 27 MLJ 119 at 120. He was in fact not interested in engaging a new Counsel. Three days after I made the order he filed a notice of intention to act in person in this action in place of Messrs. Venu Nair & Co. The second defendant, too filed a similar notice on the same day. Secondly, the second defendant, who was absent, is entitled to apply to set aside my order dismissing the appeal in his absent under O. 14, r. 11 of the Rules of the High Court 1980. The first defendant is entitled to appeal, as he is doing now, against my decision to the Supreme Court.

The question that arises here is whether the defendants are entitled to ask for further argument in open Court under O. 56 r. 2(2), which states:

- a** Any party dissatisfied with any order made by a Judge in Chambers may apply, at the time the order is made, orally or at any time within four days from the day of the order in writing to the Registrar, for the adjournment of the matter into Court for further argument, and on such application, the Judge may either adjourn the matter into Court and hear further argument, or may certify in writing that he requires no further argument. If the Judge hears further argument, he may set aside the order previously made and make such other order as he thinks fit.
- b** Under r. 2(2) there must be an order made in chambers and the party dissatisfied with the order may apply for further argument. The word "further" must be read in its plain and ordinary meaning. According to *The Shorter Oxford Dictionary*, 3rd. Edn., Vol. 1, p. 820, the word "further" means, "To or at a more advanced point ... 2. To a greater extent ... 3. In addition ...". From the definition of the word "further" it is clear that there must be an argument before the order is made in chambers, if the party seeks further argument. If the matter is adjourned into open Court for further argument, the party who asks for further argument must present his argument in addition to what has already been argued in chambers. The party must either introduce additional issues or authorities or develop its argument to a more advanced point for the consideration of the Judge. If there has been no argument at all in chambers r. 2(2) does not apply.
- c**
- d** In the present case I made two orders viz., an order refusing to grant the adjournment and an order dismissing the appeal with costs. With regard to the first order, there was an argument but in this case further argument on the question of adjournment would not serve any purpose. In any event, in his letter to the Senior Assistant Registrar dated 3 February 1990, the first defendant only asked for further argument in respect of the second order. There was no argument at all on the appeal on 30 January 1990. Since there was no argument, r. 2(2) could not be invoked. In the circumstances I refused to allow the application for further argument and issued a certificate under the said rule that I did not require further argument. The second defendant did not make an application for further argument.
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- For the reasons stated above the orders I made in chambers stand until and unless reversed by the Supreme Court and in respect of the second defendant until and unless set aside by this Court.
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Also found at [1990] 2 CLJ 785

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